

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL C. BOLIN,) Case No. C.V. F-99-5279-REC
)
Petitioner,) <u>DEATH PENALTY CASE</u>
)
vs.) ORDER DIRECTING PETITIONER TO
) FILE PHASE III BUDGET AND
Steven W. Ornoski, As Acting) SCHEDULING PHASE III CASE
Warden of San Quentin) MANAGEMENT CONFERENCE
State Prison,)
) DATE: January 18, 2006
Respondent.) TIME: 8:30 a.m.
) COURTROOM ONE

Petitioner Paul C. Bolin ("Bolin") filed his Amended Petition for Writ of Habeas Corpus ("Amended Petition") on January 19, 2005. Respondent Steven W. Ornoski, As Acting Warden of San Quentin State Prison (the "Warden") filed his Answer to the Amended Petition on June 17, 2005. On September 29, 2005, this Court determined that the Amended Petition was exhausted. Because Bolin's counsel were newly appointed to the case, they were not then prepared to commit themselves to move forward with the litigation in its present form. Accordingly, the Court granted Bolin up to and including December 12, 2005 to decide whether to file a motion to further amend the Amended Petition. On December 8, 2005, Bolin notified the Court that he will not request leave to amend the Amended Petition, but rather will

1 proceed with the litigation in its present form. This decision brings
2 to a close Phase II of the litigation and commences Phase III.

3 As fully described in the Guide to Case Management and Budgeting
4 in Capital Cases for the Fresno Division of the Eastern District of
5 California (hereafter "Attorney Guide"),¹ Phase III of capital habeas
6 litigation involves briefing of the petition, whereby the petitioner
7 prepares a comprehensive memorandum of points and authorities in
8 support of the claims alleged, the Warden prepares a comprehensive
9 memorandum of points and authorities opposing the claims alleged, and
10 the petitioner prepares a traverse responding to the arguments
11 advanced in the Warden's opposition brief. In addition to merits
12 briefing, Phase III is dedicated to fact development, including
13 discovery, record expansion, and briefing a motion for an evidentiary
14 hearing.

15 Since this case is subject to budgeting requirements mandated by
16 the Ninth Circuit Judicial Council, it is incumbent upon Bolin,
17 through his attorneys, to prepare and submit a case management plan
18 and budget for Phase III. Although only the professional time and
19 expenses of private appointed co-counsel, Robert D. Bacon, will be
20 included in the case management plan and budget, the Court requires
21 disclosure of the time and expenses intended to be utilized by co-
22 counsel, Assistant Federal Defender Allison Claire, as well. This
23 disclosure will assist the Court in determining adequacy of the case
24 management plan and the propriety of the division of labor within
25 Bolin's litigation team. The Court finds that since budget
26 applications require disclosure of matters protected by the attorney-

27
28 ¹ The Attorney Guide is posted on the web page for the District Court.

1 client and/or work product privileges, the need for confidentiality
2 is inherent in the budgeting process. Accordingly, Bolin's Phase III
3 case management plan and budget will be filed with the Court under
4 seal.²

5 The case management plan will include proposed expenditures for
6 filing a comprehensive brief in support of the Amended Petition and
7 a Traverse, as well as a motion for an evidentiary hearing and reply
8 brief. For the scope and breadth of an evidentiary hearing motion,
9 the parties are directed to consult the Attorney Guide.³ In addition,
10 the Phase III case management plan should include efforts to conduct
11 factual development discovery⁴ and expand the record, if appropriate.
12 It is anticipated that factual development discovery and record
13 expansion, if any, will occur prior to Bolin's filing a motion for an
14 evidentiary hearing.

15 At the Phase III Case Management Conference, the Court will
16 address the completion of these various tasks. As noted above,
17 Bolin's memorandum of points and authorities in support of the Amended
18 Petition shall be comprehensive. In this Court, the memorandum of
19 points and authorities in support of a capital habeas petition

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21 ² Counsel for Bolin should not electronically file the
22 application for his Phase III budget, but rather submit it for filing
under seal by mail to allow Court staff to scan the document into the
electronic system.

23 ³ As recited at ¶ 58 of the Attorney Guide, the motion shall not
24 recite any legal authority on the merits of the claims, but be limited
25 to identification of: (a) the claims for which a hearing is sought;
26 (b) an offer of proof as to the evidence sought to be presented; and
27 (c) the legal grounds for the evidentiary hearing, including reason(s)
28 Petitioner did not present the evidence in state proceedings according
to cases construing 28 U.S.C. § 2254(e)(2).

⁴ Discovery conducted during Phase III of the litigation is
designed to develop facts, and is distinguished from discovery
conducted during Phase IV in anticipation of an evidentiary hearing.

1 provides a petitioner with the opportunity to thoroughly develop the
2 legal arguments in support of the merits of each claim. The Warden's
3 memorandum of points and authorities in opposition to the petition
4 shall allege all affirmative defenses, including procedural default
5 and *Teague* bars. The parties are admonished that procedural defenses
6 will not be addressed prior to the Court's review of the merits of
7 Bolin's Amended Petition. The parties should be prepared to discuss
8 briefing and other schedules for all of the pertinent Phase III
9 litigation tasks, including informal fact development discovery at the
10 case management conference hearing. Since a significant number of
11 discovery issues can be resolved informally by the parties, it may be
12 that discovery identified in the proposed budget and budget
13 application ultimately may require less time to complete than
14 originally contemplated. The Court's approval of a budget item may
15 be conditional on the complexity of the task and downward adjustment
16 may be made during voucher processing, as necessary.

17 The Phase III Case Management Conference will be conducted
18 telephonically at 8:30 a.m. on January 18, 2006, with counsel for
19 Bolin responsible for arranging and initiating the call. Ten court
20 days prior to the date scheduled for the conference, Bolin shall
21 submit his application for a Phase III case management plan and budget
22 under seal by mail, as well as by facsimile and/or e-mail
23 transmission. Case management matters will be discussed with both
24 parties at the conference. Matters related solely to budgeting will
25 be conducted ex parte, with only Bolin's interests represented.

26 IT IS SO ORDERED.

27 Dated: December 13, 2005

/s/ Robert E. Coyle
Robert E. Coyle
United States District Judge